

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** By **CHAIRMAN WILLIAM CRISMORE**, on January 5, 2001,  
at 3:00 P.M., in Room 317-B and C, Capitol.

#### **ROLL CALL**

##### **Senate Members Present:**

Sen. William Crismore, Chairman (R)  
Sen. Dale Mahlum, Vice Chairman (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Mack Cole (R)  
Sen. Lorents Grosfield (R)  
Sen. Glenn Roush (D)  
Sen. Mike Taylor (R)  
Sen. Ken Toole (D)

**Senate Members Excused:** Sen. Bea McCarthy (D)  
Sen. Ken Miller (R)  
Sen. Bill Tash (R)

**Senate Members Absent:** None.

**Senate Staff Present:** Nancy Bleck, Committee Secretary  
Mary Vandembosch, Legislative Branch

##### **House Members Present:**

Rep. Cindy Younkin, Chairman (R)  
Rep. Rick Dale, Vice Chairman Majority (R)  
Rep. Gail Gutsche, Vice Chairman Minority (D)  
Rep. Keith Bales (R)  
Rep. Dee Brown (R)  
Rep. Gilda Clancy (R)  
Rep. Larry Cyr (D)  
Rep. Bill Eggers (D)  
Rep. Ron Erickson (D)  
Rep. Christopher Harris (D)  
Rep. Linda Holden (R)  
Rep. Joan Hurdle (D)  
Rep. Rick Laible (R)  
Rep. Jeff Laszloffy (R)  
Rep. Bob Story (R)  
Rep. Brett Tramelli (D)

**House Members Excused:** None.

**House Members Absent:** Rep. Rod Bitney (R)

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Rep. Aubyn Curtiss (R)  
Rep. Doug Mood (R)  
Rep. Dave Wanzenried (D)

**House Staff Present:** Holly Jordan, Committee Secretary  
Larry Mitchell, Legislative Branch

**Other Staff Present:** Speaker: Todd Everts, Legislative Branch

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:** Joint Informational Meeting

**SENATE CHAIRMAN BILL CRISMORE (R), SD 41, LIBBY,** called the meeting to order.

**HOUSE CHAIRMAN CINDY YOUNKIN (R), HD 28, BOZEMAN,** introduced **Todd Everts, Legislative Environmental Policy Office** and asked **Mr. Everts** to address these two committees with the thought process that our staff takes into consideration when drafting bills. One of those considerations is the Supreme Court case that came out a little over a year ago with Montana Environmental Information Center (MEIC) v. Dept. of Environmental Quality (DEQ) regarding mining and water discharge issues. The legislative staff looked at this case closely in order to provide some guidance in drafting bills to avoid any problems in the constitutionality of them.

**CHAIRMAN CRISMORE** advised this is not a regular hearing so no questions from the public will be taken.

**Mr. Everts** advised he is hired by Legislative Council (leadership) and the Legislative Environmental Quality Council (EQC, an interim committee) combined. The EQC is responsible, statutorily, for legislative oversight and policy involving natural resource, environmental, energy, fish and wildlife issues. **CHAIRMAN CRISMORE AND CHAIRMAN YOUNKIN** sit on that council. **CHAIRMAN CRISMORE** is the EQC chairman. **REP. DOUG MOOD,** House Natural Resources committee member and **SEN. MACK COLE,** Senate Natural Resources committee member are current members of EQC. We have past EQC members serving on both House and Senate Natural Resources Committees. They are **SEN. VICKI COCCHIARELLA, SEN. BILL TASH,** and **SEN. LORENTS GROSFIELD.** These legislators have had the privilege of serving on that council dealing with very complex, emotional and divisive issues. **Mr. Everts** advised the staffers on these committees are a part of his staff. **Larry Mitchell, Mary Vandenbosch** and **Krista Lee Evans, Legislative**

**Environmental Policy Office**, staff a number of committees in the legislature. **Ms. Vandebosch** staffs the Senate Fish and Game and Senate Natural Resources committees. **Ms. Evans** staffs the House Agriculture committee. **Mr. Everts** staffs the new Senate Energy and Telecommunications committee. The staff also drafts most of the legislation under these topics.

Given the issues associated with the MEIC v. DEQ case, **Mr. Everts** was requested by our chairs to share the thought process he provided to his non-partisan staff who are required to evaluate bill drafts and legislation and bills coming through the committees for their constitutionality. A hand-out, **EXHIBIT (nas03b01)**, titled Staff Analysis of Legislation Involving the Fundamental Right to a Clean and Healthful Environment was distributed. **Mr. Everts** said that his staff were not too sure how this MEIC v. DEQ case interpreted the fundamental right to a clean and healthful environment and he said he had read it and is not too sure, at this point, exactly what it says either. **Mr. Everts** advised he will try to provide some guidance so he prepared an internal staff legal memorandum to help guide our staff through this when they are trying to fulfill their duties and obligations for legislators and hope it is understood that this was not derived to make this presentation. **Mr. Everts**, as non-partisan staff, stated his purpose of this presentation is not to debate the merits of this case, as that is the responsibility of policymakers or others to decide. **Mr. Everts** advised this analysis provides the Montana Supreme Court's definition, paraphrased, of the constitutional right to a clean and healthful environment on page one. He also has listed five steps, on page one and two, to approach analysis of legislation to determine whether or not it is constitutional. He also has noted four caveats on pages one through three and stated some relevant constitutional provisions on page four, a case summary of MEIC v. DEQ on page five, a copy of the Non-Degradation Policy on page six, and Bill Draft Checklist Report on page seven.

**Mr. Everts** gave a simple example of this for purposes of this analysis. A bill was drafted prohibiting him from drinking his Pepsi before him. Drinking his Pepsi happens to be his fundamental right under the Constitution. The bill states he can not have it and the legislators know he can not have it because they know if he took a drink of his Pepsi he would get up and the presentation would be over right now. If this bill passed into law and it implicated his right to get his Pepsi, the court would look at that law and question whether there was a compelling, good, solid, strong, reason for prohibiting him from grabbing his Pepsi and drinking it. The reason is, hopefully, that the legislators do not want him to get up and walk out of the room right now. If the court sees this strong interest and it is in

the interest of the public and is very compelling they are going to ask if this action is necessary to achieve that compelling interest. The courts will look at the prohibition of him grabbing and drinking his Pepsi and examine whether or not it is necessary to achieve the result and block him from walking out of this room. The courts will also question if in this bill the prohibition is drafted in such a way so that it is least drastic and did it allow him other alternatives instead of walking out of the room such as having the Pepsi after finishing the presentation and would that be good enough. The courts will question if it was closely tailored to the compelling state interest and whether his fundamental right was implicated. The court will go through a strict scrutiny analysis of the compelling state interest, the necessity of the action to achieve that interest, and whether it is the least drastic action that could have been taken or were there other alternatives available to achieve that.

This presentation encapsulates the thought process that the Supreme Court and MEIC thought was ok in relationship to its discussion on whether the state's action in that case violated the constitution. This court decision was interesting because it kind of skipped around on the usual constitutional analysis steps.

**Mr. Everts** references caveat #4 on page 3. There are other fundamental rights, besides the right to a clean and healthful environment, in Article II, Section 3 and those are the rights to pursuing life's basic necessities, enjoying and defending life and liberty, acquiring and possessing and protecting property, seeking safety, health, and happiness in all lawful ways.

**Mr. Everts** does not know how the Supreme Court would end up balancing these rights.

***{Tape : 1; Side : A; Approx. Time Counter : 0 - 30; Comments :  
The last few minutes of this talk did NOT record on SIDE B.}***

**ADJOURNMENT**

Adjournment: 3:35 P.M.

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SEN. WILLIAM CRISMORE, Chairman

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NANCY BLECK, Secretary

WC/NB

**EXHIBIT** (nas03bad)